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LOUISVILLE LADDER, INC. and
HD SUPPLY, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MARK V. VINES, an individual

Plaintiff,

vs.

HD SUPPLY, INC., a corporation;
LOUISVILLE LADDER, INC., a
corporation, and DOES 1-10,
inclusive,

Defendants.

CASE NO. SACV12-1384 JVS (RNBx)

**[Originally Filed in Orange County
Superior Court; Case No. 30-2012
00587229]**

~~[PROPOSED]~~ PROTECTIVE ORDER

Date of Removal: August 28, 2012

Trial Date: December 10, 2013

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are

entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3 below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action but are retained to represent or advise a party to this action and have appeared in this action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

2.10 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as "CONFIDENTIAL."

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Protective Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving

Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Protective Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Protective Order.

1 Mass, indiscriminate, or routine designations are prohibited. Designations
2 that are shown to be clearly unjustified or that have been made for an improper
3 purpose (e.g., to unnecessarily encumber or retard the case development process or
4 to impose unnecessary expenses and burdens on other parties) expose the
5 Designating Party to sanctions.

6 If it comes to a Designating Party's attention that information or items that it
7 designated for protection do not qualify for protection, that Designating Party must
8 promptly notify all other Parties that it is withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in
10 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
11 that qualifies for protection under this Protective Order must be clearly so
12 designated before the material is disclosed or produced.

13 Designation in conformity with this Protective Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions), that the Producing Party affix
16 the legend "CONFIDENTIAL" to each page that contains protected material. If
17 only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins).

20 (b) for testimony given in deposition, that the Designating Party
21 identify on the record, before the close of the deposition, all protected testimony.

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is stored
25 the legend "CONFIDENTIAL." If only a portion or portions of the information or
26 item warrant protection, the Producing Party, to the extent practicable, shall identify
27 the protected portion(s).
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party's right to secure protection under this Protective Order for
4 such material. Upon timely correction of a designation, the Receiving Party must
5 make reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 Designating Party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a Party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of the
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient) within 10 days of the date of service of
23 notice, in compliance with Central District Local Rule 37-1. In conferring, the
24 Challenging Party must explain the basis for its belief that the confidentiality
25 designation was not proper and must give the Designating Party an opportunity to
26 review the designated material, to reconsider the circumstances, and, if no change
27 in designation is offered, to explain the basis for the chosen designation. A
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1 Challenging Party may proceed to the next stage of the challenge process only if it
2 has engaged in this meet and confer process first or establishes that the Designating
3 Party is unwilling to participate in the meet and confer process in a timely manner,
4 as is also required by Central District Local Rule 37-1, with which the parties also
5 must comply.

6 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
7 court intervention, the Designating Party shall file and serve the documents
8 required by Central District Local Rule 37-2, within 21 days of the initial notice of
9 challenge or within 14 days of the parties agreeing that the meet and confer process
10 will not resolve their dispute, whichever is later. The joint stipulation contemplated
11 by Local Rule 37-2 must be accompanied by a competent declaration affirming that
12 the movant has complied with the meet and confer requirements imposed in the
13 preceding paragraph and Local Rule 37-1. Failure by the Designating Party to file
14 the documents required by Local Rule 37-2, including the required declaration,
15 shall automatically waive the confidentiality designation for each challenged
16 designation, unless the failure to file the documents is due to the delay or refusal of
17 another party to contribute their portion of the joint stipulation or to meet and
18 confer. In addition, the Challenging Party may file a motion challenging a
19 confidentiality designation at any time if there is good cause for doing so, including
20 a challenge to the designation of a deposition transcript or any portions thereof (the
21 Challenging Party must comply with the Central District Local Rules, including
22 Rules 37-1 and 37-2, in doing so). Any motion brought pursuant to this provision
23 must be accompanied by a competent declaration affirming that the movant has
24 complied with the meet and confer requirements imposed by the preceding
25 paragraph. Nothing in this section supersedes the requirements of Central District
26 Local Rules 37-1 or 37-2, with which the parties must also comply.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Protective Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A;

3 (b) the officers, directors, and employees (including House Counsel) of
4 the Receiving Party to whom disclosure is reasonably necessary for this litigation
5 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
6 A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom
8 disclosure is reasonably necessary for this litigation and who have signed the
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff, professional jury or trial consultants,
12 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
13 for this litigation and who have signed the “Acknowledgment and Agreement to Be
14 Bound” (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure
16 is reasonably necessary and who have signed the “Acknowledgment and
17 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating
18 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits
19 to depositions that reveal Protected Material must be separately bound by the court
20 reporter and may not be disclosed to anyone except as permitted under this
21 Protective Order.

22 (g) the author or recipient of a document containing the information or
23 a custodian or other person who otherwise possessed or knew the information.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
 2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other
 4 litigation that compels disclosure of any information or items designated in this
 5 action as “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
 7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or
 9 order to issue in the other litigation that some or all of the material covered by the
 10 subpoena or order is subject to this Protective Order. Such notification shall
 11 include a copy of this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
 13 pursued by the Designating Party whose Protected Material may be affected.

14 The Designating Party shall bear the burden and expense of seeking
 15 protection in that court of its confidential material – and nothing in these provisions
 16 should be construed as authorizing or encouraging a Receiving Party in this action
 17 to disobey a lawful directive from another court, and nothing contained in these
 18 provisions should be construed as authorizing or encouraging a Receiving Party in
 19 this action to disobey a lawful subpoena issued in another action.

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 21 PRODUCED IN THIS LITIGATION

22 The terms of this Order are applicable to information produced by a Non-
 23 Party in this action and designated as “CONFIDENTIAL.” Such information
 24 produced by Non-Parties in connection with this litigation is protected by the
 25 remedies and relief provided by this Protective Order. Nothing in these provisions
 26 should be construed as prohibiting a Non-Party from seeking additional protections.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Protective Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. In accordance with Local Rule 79-5.1, if any papers to be filed with the Court contain information and/or documents that have been designated as “Confidential,” the proposed filing shall be accompanied

1 by an application to file the papers or the portion thereof containing the designated
2 information or documents (if such portion is segregable) under seal; and the
3 application shall be directed to the judge to whom the papers are directed. For
4 motions, the parties shall publicly file a redacted version of the motion and
5 supporting papers.

6 13. FINAL DISPOSITION.

7 Within 60 days after the final disposition of this action, as defined in
8 paragraph 4, each Receiving Party must return all Protected Material to the
9 Producing Party or destroy such material. Notwithstanding this provision, Counsel
10 are entitled to retain an archival copy of all pleadings, motion papers, trial,
11 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
12 and trial exhibits, expert reports, attorney work product, and consultant and expert
13 work product, even if such materials contain Protected Material. Any such archival
14 copies that contain or constitute Protected Material remain subject to this Protective
15 Order.

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17 IT IS SO ORDERED.

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20 Dated: July 12, 2013



Hon. Robert N. Block
UNITED STATES MAGISTRATE JUDGE

1 FORM OF ORDER APPROVED BY:

2
3 LAW OFFICES OF
4 HARRINGTON, FOXX, DUBROW
& CANTER

SNELL & WILMER L.L.P.

5 By: /s/ Daniel E. Kenney (as authorized
6 on June 21, 2013)

By: /s/ Jonathan R. Murphy (as
authorized on July 10, 2013)

7 Edward R. Leonard
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LOUISVILLE LADDER INC.

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